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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 864.

CHARLEY WILLIAMS, DONALD L. WASHINGTON, WILLIAM JONES, *Appellants*,

v.

UNITED STATES OF AMERICA, *Appellee*.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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INDEX

	Page
Opinion below	2
Jurisdiction	2
Questions presented	2
Statute involved	3
Statement of the case	3
Constitution and Rules involved	5
Reasons urged for allowance of the Writ	5
Appendix	1a-2a

TABLE OF CASES

Carlo v. U.S., 286 F. 2d 841, 846	12
Collins v. U.S., 289 F. 2d 129	12
Constitution of the United States, Amendment IV	3, 5
Gilbert v. U.S., 291 F. 2d 586	12
Lee v. U.S., 98 U.S. App. D.C. 97, 232 F. 2d 254	14
McKnight v. U.S., 87 U.S. App. D.C. 151, 183 F. 2d 977	13
Minovitz v. U.S., 112 U.S. App. D.C. 21, 298 F. 2d 682	8
Schoeneman & Markham, Jr. v. U.S., 317 F. 2d 173, 115 U.S. Appeals D.C. 110	10
Shore v. U.S., 49 F. 2d 519, 60 App. D.C. 137	9
Staker v. U.S., 5 F. (2d) Sixth Cir. 312	14
U.S. v. Epstein, 33 F. 2d 982	7
U.S. v. Hinton, 219 F. 2d 324, 326	7
U.S. v. Santore, 290 F. 2d 51	9
Wong Sun et al. v. U.S., 9 L. Ed. 2d pp. 441	10-11

Federal Rules of Criminal Procedure, Rule 41 (c) (e)	5
Title 5 Section 312 D. of C. Code 1961 (Ed)	3

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UNITED STATES OF AMERICA, *Appellee*.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

The Petitioners herein, respectfully pray for writ of certiorari to review the decision and judgment of the United States Court of Appeals for the District of Columbia, entered on December 17, 1963, to which Motion for Re-Hearing was made and denied by United States Court of Appeals for the District of Columbia Circuit on January 24, 1964.

THE OPINION BELOW

The opinion-order of the United States Court of Appeals for the District of Columbia Circuit has not been reported. The opinion-order has been printed in the Appendix.

JURISDICTION

Jurisdiction to issue the writ is found in the provisions of Judicial Code as same are set forth in 28 U.S.C.A., Sec. 1254(1).

QUESTIONS PRESENTED

I

It was error for the Trial Court to hold that a search warrant for the entire premises was not a general warrant, when others were living in the premises and not associated with the alleged unlawful venture.

II

It was error for the Trial Court to hold that an arrest warrant for the defendant, William Jones, was sufficient in Law, where the probable cause suggested was only by reference to a distinct and separate document, i.e. the aforementioned search warrant and the probable cause thereto set forth.

III

It was error when the above mentioned warrant of arrest for William Jones was executed in the back yard of the premises searched, to then bring the said William Jones under the arrest warrant into the house where certain suggested contrabrand gambling equipment had been seized under the search warrant.

STATUTE INVOLVED

Title 5 Section 312-D. of C. Code 1961 (Ed)

Amendment IV—Constitution of the United States, Searches and Seizures:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

STATEMENT OF THE CASE

On August 1, 1962, the Morals Division of the Metropolitan Police Department (District of Columbia) after alleged observations for approximately eight days, obtained and served Search Warrant on premises 134 R Street, N.E., Washington, D.C. The Search Warrant for the said address was requested for the entire premises. The appellants Jones and Washington were arrested in the back yard on arrest warrants by certain of the police at a time when other police were searching the above-mentioned premises under the alleged search warrant, which was obtained the same day as the arrest warrants. Jones and Washington were taken to the basement of the premises (Tr. 126). The Appellant Williams was found in a closet on the first floor and was also removed to the basement (Tr. 127). At one time or another an officer was in every room of the house. (Tr. 155). As indicated by Officer Goldston "during the extended search" (Tr. 156) the said Goldston entered one room on the second floor where he found a man in bed at

which time he found no gambling paraphernalia in the room (Tr. 157). He removed the man to the basement (Tr. 158). The man informed the officer that he lived there (Tr. 159). Bernice Blandon, a co-Defendant below, testified that her daughter also lived in the premises (Tr. 201). Sgt. Lockwood testified that Bernice Blandon had been upstairs during the search of the first and second floors and that after the search was completed she was brought to the basement (Tr. 220). Lockwood asked if she had a rooming license and was informed that while she had roomers there she had no license (Tr. 220). The said officer told her he did not think everyone that was in the premises was involved. (Tr. 221). He asked Blandon if one of the roomers, Freeman Davis, was involved and she stated he wasn't, that he was employed by the government (Tr. 222). She was questioned about another roomer, Louise Colbert, and she advised the officer that this party was only a roomer in the house. The officer then in the presence of Bernice Blandon asked Miss Colbert if that was right and she said, "That is correct" (Tr. 222). The said officer further testified that he talked to two roomers and Bernice Blandon's daughter after they had searched the first and second floors (Tr. 226). The said officer stated that the roomer, Louise Colbert, was in the back yard at the time of the raid and he saw Officers Durham and Goldston bringing Jones and Washington down the basement steps. (Tr. 238).

Motions to suppress evidence seized under the Search Warrant were heard by the Trial Court and overruled as to all Appellants.

In addition, Motion on behalf of Appellant William Jones was made on the basis that he was not arrested at the premises searched but in the back yard

under a warrant of arrest issued without adequate probable cause. Both Motions were overruled by the Trial Court and all the alleged contrabrand evidence in the basement and found under the search warrant was considered by the Trial Court against the Appellant Jones who had been brought into the premises after his arrest in the yard on the warrant of arrest.

At the time of the arrest in the back yard no evidence of a contraband nature was found on or about the Appellant Jones (Tr. 126, 141).

CONSTITUTION AND RULES INVOLVED

1. Amendment IV—Constitution of the United States, Searches and Seizures

2. Rule 41 (*e*) (e) Federal Rules of Criminal Procedure

REASONS URGED FOR ALLOWANCE OF THE WRIT

I

It Was Error for the Trial Court to Hold That a Search Warrant for the Entire Premises Was Not a General Warrant, When Others Were Living in the Premises and Not Associated With the Alleged Unlawful Venture

Petitioners respectfully represent to the Supreme Court of the United States that the search warrant issued by the United States Commissioner on August 1, 1962 was a general one and as such was in violation of the mandate of the Fourth Amendment of the Constitution of the United States. It did not "particularly" describe the premises searched.

As set forth in the application for the search warrant, and on the face of the warrant itself, the "entire premises" 134 R Street, N.E., was the object of the

search. The evidence at the trial disclosed that the "entire premises" was not being used unlawfully; that there were others living in the house not associated in an unlawful enterprise, and that the officers did not know where in the premises appellants were to be found; and that a general search was conducted.

As described by Officer Goldston, at one time or another, an officer was in every room in the house (Tr. 155), during the "extended search" (Tr. 156). The testimony discloses that the occupants of the premises were herded from the first and second floors, as well as the back yard, to the basement where they were interrogated concerning their participation, if any, in the alleged numbers operation. One man, for instance, was found in bed on the second floor, his room was searched and he was taken to the basement (Tr. 157-158). It developed that he was a government employee on a day off (Tr. 222). Sgt. Lockwood asked Bernice Plandon if she had a rooming house license, and was informed that while she had roomers there, she had no license (Tr. 220).

The fact is that although she had some roomers and other members of her family living at the premises, she did not have ten roomers as is provided for in Title 5 Section 312 D. of C. Code 1961 (Ed) which in its appertaining paragraph provides as follows:

> "(b) The term 'rooming house' names a building in which rooms are rented and sleeping quarters provided to accommodate ten or more persons, not including the family of the owner or lessee."

It is apparent from the evidence that the warrant was a general one and an exploratory search of the premises was conducted. It is also obvious that the "entire premises," was not being used unlawfully.

In *United States* v. *Epstein*, 33 F. 2d 982, with respect to a warrant for the entire premises, where there were others not associated with the unlawful enterprise, the Court stated:

> "Suppose in the proceeding herein, the warrant had issued not to the agent who made application therefor, but to some other agent or officer, would the warrant, in such circumstances, have been sufficiently intelligible and definite on its face to enable such officer to make a reasonable search within the limits of the Fourth Amendment and the statute? Clearly not. Such agent would have been compelled under the command of the warrant to search the premises of innocent occupants of the loft building. It follows such a search would have been unlawful."[1]

In the instant case the warrant was not sufficiently intelligible and definite on its face to enable the officers who obtained the warrant, to conduct a "reasonable" search within the limits of the Fourth Amendment. Certainly, the procedure followed by the raiding officers in this case, under the protection of a "general" warrant could not be defined as "reasonable". It is no answer to exploratory searches to say that in order to become immunized to warrants for "entire premises," gambling violators could set up in a house with a few roomers and obtain maximum protection. The local District Court and Court of Appeals have reviewed cases which were predicated on warrants for "basement" of designated premises as well as for "first" or "second" floors in private homes. In such cases at least, the applying officers made some effort to "localize" the alleged misconduct, and certainly must

[1] See also U. S. v. Hinton (7th Cir.), 219 F. 2d 324, 326.

have been aware that "entire premises" warrants were too general, otherwise, designation of a certain portion of the premises would have been omitted.

The same objection was taken to the warrant in *Minoritz* v. *United States*, 112 U.S. App. D.C. 21, 298 F. 2d 682, and in discussing the objection the local Court of Appeals stated:

> "Appellant contends this warrant was invalid because the premises were occupied by other persons who were apparently not associated with the unlawful venture. But, the police, on two occasions had made inquiry as to the occupancy of the building and on both occasions their investigation had revealed that the house was a private dwelling and not an apartment or rooming house."

Concededly there was no such "investigation" conducted here to determine whether the privacy of others would be invaded in obtaining a general warrant.

Again, it is respectfully urged, that the term "rooming house" should not be controlling, where, as here, the roomers were not of sufficient numbers to require a rooming house license. On the other hand, if it appeared there were ten (10) roomers within the premises, a violation of the rooming house statute by the operator should not give comfort to officers of the law in by-passing the mandate of the Fourth Amendment.

The local United States Court of Appeals upheld the seizure of the evidence in *Minoritz* on the further ground that the evidence was found in the room in which appellant was arrested and was, therefore, incident thereto. Here, none of the appellants were arrested in the basement of the premises where the evidence was seized and the alleged operation was supposedly conducted.

In *Shore* v. *United States*, 49 F. 2d 519, 60 App. D.C. 137, it was argued that the premises actually consisted of defendant's garage and tire shop and also a small lunch room occupied by someone else. The local Appellate Court stated:

> "It is admitted on the record that the defendant Shore owned the whole building, and it satisfactorily appears that neither the lunchroom nor the upstairs was searched."

Thus, *Shore*, is distinguishable here, for in the instant case the entire premises was searched, nor was there evidence here that the instant premises were owned by those involved.[2]

II

It Was Error for the Trial Court to Hold That An Arrest Warrant for the Defendant, William Jones, Was Sufficient in Law, Where the Probable Cause Suggested Was Only By Reference to a Distinct and Separate Document, i.e. the Aforementioned Search Warrant and the Probable Cause Thereto Set Forth

The Affidavit on which Arrest Warrant for Jones was based was insufficient in Law.

The only attempt at setting forth probable cause in the arrest of Appellant Jones was the following:

> "And the complainant states that this complaint is based on the facts set forth in the Affidavit attached to Search Warrant in Comm.'s Docket 6 Case 73 and made a part hereof". (R Arrest Warrant for William Jones.) The Affidavit attached to Search Warrant did state that the Appellant was seen going in and out of premises 134

[2] U. S. v. Santore, 290 F. 2d 51 (2nd Cir.), cited by U.S.C.A. in its opinion, factually different.

R Street, N.E., on certain occasions in some instances with bulging pockets."

It is to be noted, however, that the Affidavit covered four (4) pages and was mainly concerned with alleged activities of others than the Appellant Jones. (See copy of search warrant in Appendix to Appellee's Brief included in designation of record).

It is fundamental that not only as to a Search Warrant, but likewise as to Warrant of Arrest, that the existence of probable cause must be set forth to justify the issuance of the Warrant, and not by way of reference particularly when it involves so many other people.

It is likewise fundamental that an individual cannot be arrested or charged for the alleged criminal act of others unless such is shown to be in fact a joint enterprise.

In the case of *Schoeneman & Markham, Jr. v. United States*, 317 F. 2d 173, 115 U.S. Appeals D.C. 110, the United States Court of Appeals for the District of Columbia stated:

> "But where, as here, the Commissioner's judgment is predicated solely on Affidavits, the Court is not relieved from making its own judgment as to whether the Affidavits provide a 'substantial basis' for him to conclude that (the evidence was) probably present in the (home). Jones v. U.S., 362 U.S. 257, 271 (1960).

In the case of *Wong Sun, et al. v. United States*, 9 L. ed. 2d pp. 441, in a comprehensive discussion of the subject matter of probable cause this Court in its opinion on page 479 stated:

"It is basic that an arrest with or without a warrant must stand upon firmer ground than mere suspicion."

In the same case (supra) this Court further stated:

"The history of the use, and not infrequent abuse, of the power to arrest cautions that a relaxation of the fundamental requirements of probable cause would 'leave law abiding citizens at the mercy of the officers' whim or caprice.'"

It is interesting to note that the Trial Judge in the instant case when the Wong Sun, et al. case (supra) was called to his attention observed:

"I must admit that the opinion shakes me." (Tr. 22)

III

It is further urged on behalf of Appellant Jones that even if the warrant should be construed as having issued on "probable cause", it is a conceded fact of record that the arrest on the said warrant occurred in the yard back of the premises searched and at a time when the Petitioner Jones was not present in said house.

Also to be noted is the conceded fact that after the officer served the arrest warrant on the Petitioner Jones there was no search of the person of Jones made or the immediate vicinity of the location where Jones was arrested.

It certainly would appear unnecessary to cite the well established Law to the effect that under an arrest with or without warrant, even if such arrest is construed as being legal, that the officers are limited in

their scope of search to the person of the individual and his immediate vicinity.

In the case of *Carlo v. United States*, 286 F. 2d 841, 846:

> "But every time there is delay in the making of the arrest and there is a search made as incidental to the arrest, the law enforcement officers take the risk that they will be charged with using the arrest as a mere pretext for the search. U.S. v. Lefkowitz, 1932, 285 U.S. 452, 76 L. Ed. 877 and other cases"

In *Gilbert v. United States*, 291 F. 2d 586 the Court points out that:

> "the search of the combined office and home and the garage of the defendant, an accountant, in connection with an arrest for forgery of a single check, which was in possession of government, was unreasonable, where a government agent allegedly maneuvered to make the arrest in the accountant's home, and no offense was committed in the presence of the arresting agents."

In the case of *Collins v. United States*, 289 F. 2d 129 the Court of Appeals for the Fifth Circuit upheld that:

> "Even if arrest by state officers was valid, it came to end when defendant was confined on nonexistent charge and subsequent search of defendant's vehicle and suitcase could not be justified as incident to lawful arrest and unregistered sawed-off shotgun found in search was required to be suppressed and could not form basis for federal prosecution."

This case points up as do the others the fundamental fact that the search must be incident to the arrest.

One of the Judges participating in the decision of the instant case at the U. S. Court of Appeals for the D.C. Circuit was former Chief Judge of that Court and now Senior Circuit Judge of the said Court. It is most enlightening to note the fact that this same Judge in *McKnight* v. *United States*, 87 U.S. App. D.C. 151, 183 F. 2d 977 in a very well considered opinion in discussing the very fundamental fact previously urged (*supra*) that an arrest may not be used as a pretext to search for evidence. In addition at page 152 of said Opinion stated:

> "'Police Strategem', waiting until McKnight was in a locked house before arresting him justified the police in breaking into the house in order to arrest him and seize evidence. We think this untenable. 'The right to break open a door to make an arrest requires something more than the mere right to arrest'".

It is again pointed out that the Petitioner Jones was arrested in the yard under the circumstances that the arresting officer knew that the other officers had already entered the premises under the search warrant and without any search of Jones at the point of arrest brought him into the house and into the presence of the gambling paraphenalia that was then being seized.

Senior Judge Edgerton in his opinion in the McKnight case (supra) quoting from the Rabinowitz case in the Supreme Court said:

> "The relevant test [] * * * whether the search was reasonable. That criterion in turn depends upon the facts and circumstances—the total atmosphere of the case. United States v. Rabinowitz, 339 U.S. 56, 66, 70 S. Ct. 430, 435."

See also:

Lee v. *United States*, 98 U.S. App. D.C. 97, 232 F. 2d 254.

Staker v. *United States*, 5 F.(2d) Sixth Cir. 312.

CONCLUSION

For the reasons set forth herein it is sincerely urged to this Court that the Writ of Certiorari to the United States Court of Appeals for the District of Columbia should be granted to permit a full review of the contentions made in this case.

Respectfully submitted,

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APPENDIX

(Filed December 17, 1963)

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
SEPTEMBER TERM, 1963

Criminal 1000-62

No. 18,075

CHARLEY WILLIAMS, *Appellant*,

v.

UNITED STATES OF AMERICA, *Appellee*.

Criminal 1000-62

No. 18,076

DONALD L. WASHINGTON, *Appellant*,

v.

UNITED STATES OF AMERICA, *Appellee*.

Criminal 1000-62

No. 18,077

WILLIAM JONES, *Appellant*,

v.

UNITED STATES OF AMERICA, *Appellee*.

Appeals from the United States District Court for the District of Columbia.

Before: Edgerton, Senior Circuit Judge, and Washington and Danaher, Circuit Judges.

Judgment

These cases came on to be heard on the record on appeals from the United States District Court for the District of Columbia, and were argued by counsel.

On Consideration Wherfof, it is ordered and adjudged by this court that the judgments of the District Court on appeal in these cases are affirmed. See *Minovitz* v. *United States*, 112 U.S. App. D.C. 21, 298 F. 2d 682 (1962), and *United States* v. *Santore*, 290 F. 2d 51 (2d Cir. 1960), *cert. denied*, 365 U.S. 834 (1961).

Per Curiam.

Dated: December 17, 1963

In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 864

CHARLEY WILLIAMS, DONALD L. WASHINGTON, AND WILLIAM JONES, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (R. 38)[1] is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on December 17, 1963 (R. 38). A petition for rehearing was denied on January 24, 1964 (R. 40–46). The petition for a writ of certiorari was filed on February 24, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

[1] "R." refers to the court of appeals' record; "Tr." refers to the trial transcript of testimony in the district court.

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QUESTIONS PRESENTED

1. Whether a search warrant for the entire premises of a small house was valid.

2. Whether there was probable cause for issuance of a warrant for the arrest of petitioner Jones.

STATEMENT

Petitioners Williams, Washington and Jones, together with co-defendant Bernice E. Blandon, were charged in a three-count indictment in the United States District Court for the District of Columbia with operation of a lottery, possession of numbers slips, and maintaining gambling premises, in violation of 22 D.C. Code 1501, 1502 and 1505 (R. 4–5). The court, trying the cases without a jury, found petitioners guilty on all three counts (R. 6, 22). Jones was sentenced to imprisonment for a period of from six to eighteen months; Washington for a period of one to three years; and Williams for a period of from eight to twenty-four months (R. 23–25). On appeal (R. 26–27), the convictions were affirmed (R. 38).

On various dates between July 3 and July 31, 1962, officers of the Metropolitan Police Department observed petitioners arrive at a house at 134 R Street, enter the premises with brown paper bags and pockets bulging, and leave with their pockets empty.[1] Williams was seen taking numbers slips from unidentified persons (R. 28–36). On four occasions Jones was seen entering 134 R Street with his pockets bulging (R. 29, 31, 33, 36).

[1] All three petitioners had been arrested on previous occasions for operation of a lottery (R. 36).

The house at 134 R Street is about 18 feet wide and 40 feet deep. It has one room in the basement, a bedroom, two sitting rooms, and a kitchen on the first floor, and four bedrooms and a bathroom on the second floor (R. 19). A telephone address directory listed co-defendant Bernice Blandon and her daughter as the sole occupants of the premises (R. 15; Tr. 211–212). The structure was not licensed as a rooming house (R. 16).

Based upon an affidavit containing a detailed account of observations by the two police officers during their investigation, a search warrant was issued for the entire premises at 134 R Street, Northeast, occupied by Bernice Blandon, and warrants were obtained for the arrest of all three petitioners (R. 28–37, 1–2). In the execution of the warrants on August 1, 1962, the officers, after entering the house, saw Bernice Blandon with numbers slips in her hand in a hallway and arrested her (R. 11–12; Tr. 36–39, 215–216). The officers then heard the "scrambling of feet in the basement" (Tr. 216). Jones ran out of the house into the back yard where officer Goldston arrested him. Washington emerged from the basement and officer Goldston arrested him. Williams came out of the basement, re-entered the rear door on the first floor, and hid in a clothes closet where another officer arrested him. All three were then taken to the basement (R. 12–13). The search of the premises resulted in the seizure of numbers gambling paraphernalia in the basement and on the first floor (R. 16, 17; Tr. 64, 71, 79, 86, 95, 102, 150, 173, 181–185).

Bernice Blandon told the officers that she did not have a rooming house license, but that she did have some roomers on the second floor (R. 16, 17). While the entire house was searched, no gambling paraphernalia was seized on the second floor (R. 17, 18, 14). Bernice Blandon told the officers that the few numbers taken from her on the first floor were hers, but that the gambling paraphernalia belonged to the three petitioners to whom she had rented the basement for three days a week at $30 a week, the money having been paid by Williams (R. 17–18; Tr. 68–69).

The court denied the motion of Jones to quash the arrest warrant against him (R. 7–9), defense motions to quash the search warrant for the entire premises at 134 R Street (R. 19, 20) and motions to suppress evidence (R. 21).

ARGUMENT

1. The search warrant described the place to be searched with sufficient particularity to enable an officer to ascertain and identify the place intended. *Steele* v. *United States No. 1*, 267 U.S. 498, 503. Where, as here, a dwelling from its outward appearance is a single-family residence, it is enough for the search warrant to describe the place by its address alone. *Minovitz* v. *United States*, 298 F. 2d 682. (C.A.D.C.); *United States* v. *Santore*, 290 F. 2d 51, 66–67 (C.A. 2), certiorari denied, 365 U.S. 834; *Townsend* v. *United States*, 253 F. 2d 461, 464–465 (C.A. 5). Petitioners attempt to distinguish *Minovitz* on the ground that, in the instant case, no investigation was conducted to determine whether the privacy of others would be invaded by obtaining the arrest

warrant for the entire premises (Pet. 8). However, the police had ascertained that the telephone directory showed that the co-defendant Bernice Blandon and her daughter were the sole occupants of the premises. There was, moreover, no license for operation of a rooming house to put the police on notice that there were individual roomers in the house.

The judge upheld the validity of the search warrant only after personally viewing the premises. Since the structure was a relatively small dwelling house,[3] the judge thought it impossible to expect an officer to designate the particular rooms in which the numbers operation was being carried on without actually entering the house (R. 19–20). To hold otherwise would be to permit the operators of an illegal gambling business to immunize themselves from a search by secretly renting rooms in a house which from all outward appearances is a single-family residence.

2. Contrary to the contention of petitioner Jones, the warrant for his arrest was issued on probable cause. There was no impropriety in incorporating by reference the officers' affidavit used to obtain the search warrant. It is immaterial that the affidavit also referred to activities by Williams and Washington, since they were of the same general nature as those attributable to Jones and showed the usual

[3] The court reasoned that the relatively small premises could not be compared to a "loft building or to an apartment house or anything of that sort" (R. 20). That fact distinguished *United States* v. *Epstein*, 33 F. 2d 982 (E.D.N.Y.) (Pet. 8), where a search warrant was ordered quashed, since the premises there were a "loft building" and the defendant occupied only a part of the fourth floor.

procedure in a numbers gambling operation. The affidavit recited at least four occasions on which Jones was seen entering 134 R Street with his pockets bulging (R. 29, 31, 33, 36). The affidavit also mentioned a previous arrest of Jones for operating a lottery (R. 36). Thus, there was sufficient cause to believe Jones involved in the gambling operation conducted from the R Street premises.

Petitioner Jones suggests that even if his arrest in the back yard were legal, the officers brought him into the basement in an improper attempt to use the arrest as a basis for the search and seizure of evidence in the house (Pet. 11–13). The contention is manifestly unsound, for the officers had a search warrant which authorized the search of the premises.

CONCLUSION

For the reasons stated it is respectfully submitted that the petition for a writ of certiorari should be denied.

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